

APPEAL NO. 010567

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 26, 2001. The appellant (claimant) appeals the hearing officer's decision that the claimant did not have disability from November 8, 2000, through the date of the CCH. The respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. With respect to the disability issue, the hearing officer decided that the claimant had disability from February 21, 2000, through February 23, 2000, and from May 1, 2000, through November 7, 2000. The claimant appeals that portion of the hearing officer's decision which finds that the claimant did not have disability from November 8, 2000, through the date of the CCH. Disability is defined in Section 401.011(16).

The claimant fell off of a ladder while stocking merchandise on _____, injuring her back and left knee. The claimant was off work for a few days and then worked in a light-duty capacity until May 1, 2000. On May 11, 2000, she underwent surgery for a torn medial meniscus of her left knee. Dr. S, the claimant's current treating doctor, reported in September 2000 that it was expected that the claimant would be restricted from all work until October 17, 2000. Dr. T noted in December 2000 that the claimant was off work and suggested a repeat MRI of the left knee.

The claimant did not object to the videotape of November 7, 2000, that the carrier offered into evidence. The claimant was not questioned about the videotape and it was not shown at the CCH. The only reference made to the videotape was in the closing argument of the claimant's attorney, who said that the videotape was benign; indicated that he had seen the videotape; did not contend that the claimant was not depicted in the videotape; and, by using the words "she" and "her" in discussing the activities shown in the videotape, gave the impression that the claimant was in the videotape. For the first time on appeal, the claimant contends that neither of the two women in the videotape are her. Since the hearing officer had the opportunity to observe the claimant at the CCH, he would be in a position to be able to determine whether the claimant is in the videotape, which he did in the Statement of the Evidence portion of his decision by stating that the videotape shows the claimant and then describes the activities shown.

There is conflicting evidence in this case. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer's decision that the claimant did not have disability from November 8, 2000, through the date of the CCH is supported

by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge